

LAND USE COMMISSION  
MEETING MINUTES

March 24-25, 2021 – 9:00 a.m.

**Pursuant to Exhibit F of the Governor’s Seventeenth Proclamation Related to the COVID-19 Emergency, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting  
Meeting Link for Wednesday, March 24, 2021

[https://us02web.zoom.us/webinar/register/WN\\_ch2t6giaRAeY\\_zBBXkedYw](https://us02web.zoom.us/webinar/register/WN_ch2t6giaRAeY_zBBXkedYw)

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Jonathan Scheuer  
(Attending via ZOOM conference media) Nancy Cabral  
Gary Okuda  
Arnold Wong  
Dawn N. S. Chang  
Dan Giovanni  
Lee Ohigashi  
Edmund Aczon

COMMISSIONERS EXCUSED: None  
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Linda Chow, Deputy Attorney General (DAG)  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk  
Natasha Quinones, Program Specialist

COURT REPORTER: Jean McManus  
(Attending via ZOOM conference media)

## **CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:00 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

## **APPROVAL OF MINUTES**

Chair Scheuer stated that the first agenda item was the approval of the March 10-11, 2021 minutes and asked if any public testimony had been submitted and if any corrections needed to be made. There was no public testimony and no corrections to be made. Commissioner Ohigashi moved to adopt the minutes. Commissioner Cabral seconded the motion. There was no discussion.

By a show of hands, the March 10-11, 2021 minutes were approved unanimously (8-0).

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the tentative meeting schedule from March 2021 to July 2021 for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

## **ACTION- A18-806 BARRY TRUST (HAWAI'I)**

Chair Scheuer stated that the next agenda item was an action regarding Docket No. **A18-806 BARRY TRUST (HAWAI'I) Amended Petition to Amend the Land Use District Boundary of Certain Lands Situated at Keaau, Puna, County and State of Hawai'i; Consisting of 0,51 Acres from the Conservation District to the Agricultural District Tax Map Key No. (3 1-5-059:059)**

## **APPEARANCES:**

Derek Simon, Esq., and Alicia Fung, Esq. represented Petitioner (Barry Trust)  
Brian Yee, Esq., Deputy Attorney General represented the Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator, OP  
Aaron Setogawa, Planner OP  
Jean Campbell, Deputy Corporation Counsel County of Hawai'i (COH)  
Jeff Darryl Deputy Planning Director, COH  
Zendo Kern, Planning Director, COH

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were no questions.

### **CLOSING ARGUMENTS**

Chair Scheuer asked Mr. Simon to present his closing arguments.

Mr. Simon thanked the Commission and provided Petitioner's closing arguments to the Commission.

Commissioner Okuda questioned Mr. Simon whether he had any objection to Conclusions of Law which dealt with permitted uses in the Agricultural district. There were no objections and no further questions for Mr. Simon.

Chair Scheuer called on Hawaii County for closing arguments. Hawaii County had no comments. There were no questions.

Chair Scheuer called Office of Planning for closing arguments. Mr. Yee stated that OP supported the request for a district boundary amendment and noted this was an unusual case.

The Commission had no questions for OP. There was no rebuttal.

Chair Scheuer moved on to formal deliberations and asked the Commission by roll call if they were prepared to deliberate on this matter. All Commissioners responded that they were prepared.

Commissioner Cabral moved to grant the petition for district boundary amendment with the conditions and suggestions provided by OP and to include the items discussed regarding HRS Section 205-4. Commissioner Wong seconded the motion.

Commissioner Okuda read his final comments regarding HRS section 205-4 into the record.

Chair Scheuer shared his perspective regarding the Commission's *kuleana*. There were no further comments.

Chair Scheuer called Mr. Orodener to poll the Commission (Commissioner Aczon was excused-- 7 Commissioners present) . The motion passed with 7 affirmative votes.

Chair called a recess at 9:38 a.m., reconvened the meeting at 9:41a.m. and called for the next agenda item.

### **CONTINUED ACTION**

Chair Scheuer stated that this was an action regarding docket: **A11-791 HG Kauai Joint Venture LLC– HoKua Place (Kaua`i); Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03:POR 01 –**

### **APPEARANCES:**

William Yuen, Esq., HG Kauai Joint Venture, LLC's (HG) representative  
Janna Ahu, Esq., representing Petitioner HG Kauai Joint Venture, LLC's (HG)  
William Bow, Witness for Petitioner  
Chris Donahoe, Deputy County Attorney representing Kaua`i Planning Dept. (County)  
Jodi Higuchi Sayegusa, Deputy Director, County  
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)  
Rodney Funakoshi, Land Use Administrator, OP  
Bianca Isaki, Esq. and Lance Collins, Esq., representing Liko Martin (Intervenor)  
Liko Martin, Intervenor

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Chair Scheuer read the list of recent written public testimony and asked if members of the Commission had disclosures to make.

Chair Scheuer noted that he and his wife have had working relationships in the past with some of the witnesses from the Petitioner's and Intervenor's Witness lists but felt that he could be impartial in this matter. There were no objections and no other disclosures from the Commissioners.

Chair Scheuer moved on to Intervenor's Offers of Proof for the admission of Exhibits I-53,55,56, 58, and I-99 into the record.

Mr. Collins provided the Offers of Proof.

Mr. Yuen objected to the Offers of Proof and argued that the Exhibits were speculative and irrelevant.

Commissioner Okuda shared his perspective on the weight of the Exhibits versus their admissibility and whether it might prejudice the proceedings.

Chair admitted all the proposed Exhibits into the record. There were no other objections or concerns.

Chair declared recess at 10:01 a.m. and reconvened the meeting at 10:11 a.m.

Mr. Yee obtained permission from the Chair to obtain procedural clarification from Mr. Yuen on the specific order of Petitioner's Witnesses and for additional time to review the added exhibits from the Petitioner.

Petitioner provided the order of the witnesses and Chair granted additional review time.

Mr. Collins had the same procedural questions as OP and asked about the additional submission of witnesses.

Chair provided his procedural expectations and asked if there were any other concerns.

Commissioner Chang requested an accommodation on the Witnesses order so that she could be in attendance to question witness Nancy McMahon. The schedule adjustment was made.

### **PETITIONER'S PRESENTATION**

Mr. Yuen offered Mr. William Bow as his first witness and asked to admit him as an expert witness in Civil Engineering. Mr. Collins had concerns regarding the LUC standards for admitting a witness as an expert.

Discussion ensued to determine the standards for admitting "expert" witnesses.

Commissioner Okuda and Ohigashi opined on the matter and Commissioner Wong made motion to move into Executive Session. The Motion was second by Commissioner Ohigashi.

Mr. Orodener polled the Commission by a roll call. By a unanimous vote, the Commission went into Executive Session at 10:39 and reconvened at 11:36.

Commissioner Chang left the meeting at 11:30. (7 Commissioners in attendance).

Chair Scheuer commented on the standards that the Commission use for accepting witnesses as experts and clarified how they would apply for this docket.

Chair Scheuer moved on to allow the questioning of the witness. William Bow as an expert in civil engineering. Mr. Bow provided information on the potable water demand for HoKua place, wastewater disposal, wastewater treatment facility, storm water drainage, and solid waste management,

### **Questions for Mr. Bow from the Parties**

#### **County**

Mr. Donohoe requested clarification about wells in the petition area and on the costs associated with constructing a new well, on the amount of daily wastewater generated by the project and the capacity issue at peak flow. County asked for Petitioner to help pay for the upgrade to the wastewater treatment plan.

#### **OP**

Mr. Yee requested clarification on the roles of the witnesses Mr. Bow and Mr. Thomas Nance and whether any alternatives were being considered to provide a water system, the detention basin and the overflow of water.

Chair called a recess at 12:30 p.m. and reconvened the meeting at 1:17p.m. Commissioner Chang rejoined the meeting. (8 Commissioners in attendance).

Mr. Yee continued questioning Mr. Bow about the type of pollutants from this project and proposals for mitigation measures for runoff pollutants.

#### **Intervenor**

Ms. Isaki requested clarification from Mr. Bow about the Petition Area Drainage Plan, wastewater treatment plant (WWTP), Exhibit 27 - Proposed Condition Summary and Detention Basin Sizes and the greenbelts, proposed drainage conceptual map and the wetland not discussed in the plan.

Chair called recess at 2:11pm and reconvened the meeting at 2:25 p.m.

### **Commissioners Questions for Mr. Bow**

Commissioner Giovanni, Chang, Ohigashi, Cabral, Wong and Okuda requested clarification on the solid waste management plan, the wastewater exceeding the capacity of the WWTP and the consequences of exceeding capacity, the sequencing of the elements of infrastructure, the estimated cost for the infrastructure of the basin, preventing flooding due to

additional rainfall and how the data is obtained for the calculations on the exhibits and the Drainage Analysis that supersedes the EIS.

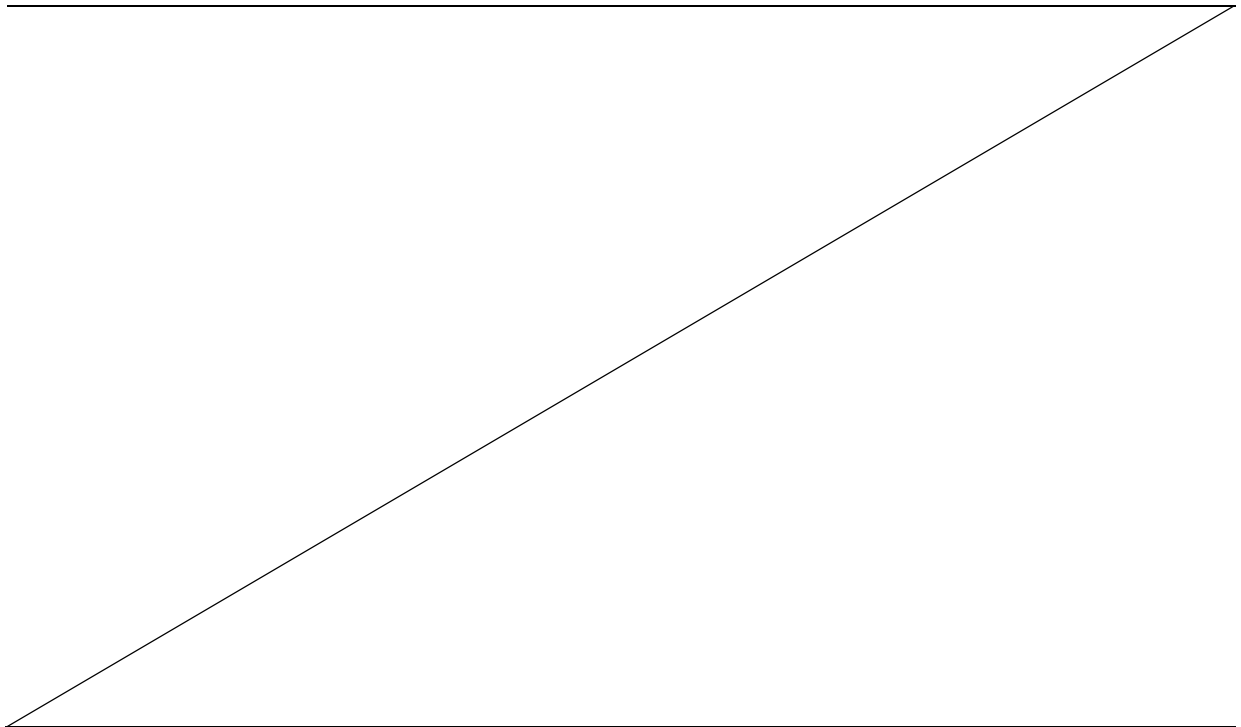
Chair Scheuer admitted the new Petitioner's Exhibit - Infrastructure Budget. There were no objections from the Parties.

Commissioner Okuda requested clarification on the changes made to the EIS and who did the Final EIS, on the document on record that identified the difference of opinion in drainage, any discussions about the need to modify the Final EIS, and the lack of resilience in the design and the risks to the public.

Chair Scheuer asked Petitioner for the remainder of their witness list and the order of appearance. Ms. Ahu asked for more time to work on the scheduling.

Chair called for a brief recess at 3:30 p.m. and reconvened at 3:32 p.m.

Petitioner provided the Witness list for the next day and Chair Scheuer declared a recess at 3:39 p.m. and stated that the Commission would reconvene the ZOOM hearing at 9:00 a.m. on March 25, 2021.



LAND USE COMMISSION  
MEETING MINUTES

March 25, 2021 – 9:00 a.m.

**Pursuant to Exhibit F of the Governor’s Seventeenth Proclamation Related to the COVID-19 Emergency, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting  
Meeting Link for Thursday, March 25, 2021

[https://us02web.zoom.us/webinar/register/WN\\_HjFwVO0nTNG3ldj\\_1sZYmw](https://us02web.zoom.us/webinar/register/WN_HjFwVO0nTNG3ldj_1sZYmw)

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Jonathan Scheuer  
(Attending via ZOOM conference media) Nancy Cabral  
Gary Okuda  
Arnold Wong  
Dawn N. S. Chang (exited/reentered meeting)  
Dan Giovanni  
Lee Ohigashi (exited/reentered meeting)  
Edmund Aczon

COMMISSIONERS EXCUSED: None  
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Dan Morris, Deputy Attorney General (DAG)  
Linda Chow, DAG  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk  
Natasha Quinones, Program Specialist

COURT REPORTER: Jean McManus  
(Attending via ZOOM conference media)



## **CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:00 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

## **CONTINUED ACTION**

Chair Scheuer stated that this was a continued action meeting regarding docket: **A11-791 HG Kauai Joint Venture LLC– HoKua Place (Kaua`i); Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03:POR 01 –**

## **APPEARANCES:**

William Yuen, Esq., representing Petitioner HG Kauai Joint Venture, LLC's (HG)  
Janna Ahu, Esq., representing Petitioner HG Kauai Joint Venture, LLC's (HG)  
Chris Donahoe, Deputy County Attorney representing Kaua`i Planning Dept. (County)  
Jodi Higuchi Sayegusa, Deputy Director, County  
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)  
Rodney Funakoshi, Land Use Administrator, OP  
Bianca Isaki, Esq. and Lance Collins, Esq., representing Liko Martin (Intervenor)  
Liko Martin, Intervenor

Chair Scheuer stated that the Commission would resume proceedings with the admission of the Petitioner's exhibits 39, 40, 41, 42, 43 and 45. Discussion ensued to determine the admissibility of what Intervenor perceived as unduly repetitious exhibits. Chair Scheuer overruled Intervenor's objection after determining that no harm would result from the admission of Petitioner's proposed exhibits.

There were no further exhibits admitted.

Chair Scheuer called for Petitioner to continue its presentation.

## **PETITIONER PRESENTATION Continued**

Ms. Ahu called Milton Ching,

- 2) Milton Ching- Cultural Descendant/Kama`aina

Ms. Ahu offered Mr. Ching as a Kauai resident and represented that he was a cultural descendant with historical knowledge of the area. Mr. Ching described his background and experience working with Department of Land and Natural Resources personnel performing archaeological work.

### **Questions for Mr. Ching from the Parties**

#### **County**

Mr. Donahoe requested clarification on Mr. Ching's position on the proposed project, its design, and the anticipated problems with traffic, affordability and other negative impacts to the community. Mr. Ching responded that he supported the proposed project and provided his perspective on how the anticipated problems might affect the community.

Commissioner Wong questioned what subject area Mr. Ching was testifying on. Ms. Ahu shared her reasons for having Mr. Ching appear.

There were no further questions from County.

#### **OP**

Mr. Yee had no questions.

#### **Intervenor**

Ms. Isaki requested clarification on Mr. Ching's lineage and relationship to Intervenor Liko Martin and on his experience as a cultural monitor.

There were no further questions from Intervenor.

Commissioner Ohigashi excused himself from the meeting with Chair's approval at 9:45 a.m. (7 Commissioners in attendance).

Mr. Morris exited the meeting and Ms. Chow entered the meeting at 9:49 a.m.

Chair Scheuer declared a recess at 9:55 a.m. and reconvened the meeting at 10:05 a.m.

Chair Scheuer noted that Commissioner Chang needed to be excused around 10:30 a.m. and checked with the Parties if there were any objections to her asking questions out of order. There were no objections.

Commissioner Chang requested clarification on Mr. Ching's cultural training and qualifications, and knowledge of *iwi kupuna* protocol, cultural resources, Native Hawaiian rights, and prior early history of the petition area lands. Commissioner Chang excused herself from the meeting at 10:31 a.m. with the Chair's permission (6 Commissioners in attendance).

**Intervenor** (continued)

Ms. Isaki inquired whether Mr. Ching was being compensated for his testimony. Mr. Ching replied that he was not being compensated.

There were no further questions from Intervenor.

**Commissioners' Questions**

Commissioner Okuda and Chair Scheuer requested clarification on Mr. Ching's role as a *Kama`aina* witness, his perspective of the proposed project's impact on jobs, traffic, lifestyle, and awareness of *heiau* in the Petition Area, and whether there was a promise of work involved with his appearance as a witness.

There were no further questions and no redirect.

Chair Scheuer declared a recess at 10:46 a.m. and reconvened the meeting at 10:55 a.m.

Ms. Ahu called her next witness, Cody Winchester.

4) Cody Winchester- Environmental and Urban Planning Expert

Mr. Winchester described his educational and professional background.

Mr. Collins commented that Mr. Winchester appeared to be reading his testimony from some source and questioned the propriety of providing testimony in that manner. Chair Scheuer halted the proceedings and investigated the matter. Discussion ensued and it was discovered that Petitioner had provided "bullet points" from the respective PowerPoint file being used for each witness. Chair Scheuer discouraged the continued use of such notes and resumed the proceedings.

Mr. Winchester described his project contributions with studies on the Greenhouse Gas (GHG) effects and sea level rise assessment for the proposed project.

**County**

Mr. Donahoe requested clarification on Mr. Winchester's work experience, climate change analysis, and on what other types of negative impacts the GHG and sea level changes might have.

There were no further questions from County.

**OP**

Mr. Yee requested clarification on climate change, sea level rise, possible flooding and drought and weather concerns.

There were no further questions from OP.

## **Intervenor**

Ms. Isaki requested clarification on the sea level and GHG studies, how they were not included in the Environmental Impact Statement (EIS) approved by the LUC, and how his new studies information compared to the reports included in the earlier 2019 EIS. Ms. Isaki also sought further details on how GHG might be impact the proposed development and its need for additional infrastructure to support the increased number of homes and associated traffic, wastewater and stormwater management, sewage treatment, and energy demands.

Commissioner Chang reentered the meeting at 11:36 a.m. (7 Commissioners present).

Chair Scheuer declared a recess at 12:03 p.m. and reconvened the meeting at 1:00 p.m.

Commissioner Ohigashi joined the meeting (8 Commissioners now present at 1:00 p.m.)

After requesting additional clarification on how the GHG analysis was performed, Ms. Isaki concluded her questioning.

## **Commissioners' Questions**

Commissioners Giovanni, Chang, Wong, Okuda, Cabral and Chair Scheuer requested clarification on how the infrastructure components were represented in the GHG study, how and what traffic study numbers were used, how the new infrastructure systems would mesh into the existing systems, traffic impacts to GHG, the sufficiency of information contained in the 2019 EIS, water system design alternatives, population fluctuations, fresh water resources, climate change impacts, energy cost considerations, and provisions for coastal retreat due to sea level rise.

There were no further Commissioner questions and no redirect.

Chair Scheuer declared a recess at 2:10 p.m. and reconvened the meeting at 2:22 p.m.

Mr. Yuen recalled his second witness, Mr. William Bow, Civil Engineer, for further questioning.

Commissioner Wong excused himself from the meeting with the Chair's approval at 2:30 p.m. (7 Commissioners now present).

Commissioners Okuda, Ohigashi, Chang, Giovanni and Chair Scheuer requested clarification on what Exhibit 45- Infrastructure Cost Estimates represented, what considerations were made in arriving at the final figures, what land areas were included in the design, what design specifications were used, what design contingencies were included, whether a performance bond for the proposed project was feasible, and what other measures could be used to assure the community that the project would be completed. Chair Scheuer requested

additional clarification on Exhibit 24- Water Analysis and the water and well testing that was involved.

**Redirect**

Mr. Yuen requested clarification from Mr. Bow regarding his testimony response regarding performance bonds. Mr. Bow provided further details of why performance bonds were better utilized when projects had received permits and approvals from the County.

Chair Scheuer summarized the progress of the hearings and entertained questions and concerns from the Parties.

Discussion ensued to clarify Mr. Collins' confusion regarding recross examination during the proceedings. Chair Scheuer reviewed how the LUC conducts its hearings.

Further discussion continued to determine when Mr. Bow would testify again, when the hearing on this matter would continue, how Petitioner's remaining exhibit would be addressed and to air concerns related to completing the proceedings before the allowed time limit for the docket expired.

There being no further business or items to discuss, Chair Scheuer adjourned the meeting at 3:48 p.m.

